

1 GREGORY P. STONE (State Bar No. 78329)
gregory.stone@mto.com
2 BRADLEY S. PHILLIPS (State Bar No. 85263)
brad.phillips@mto.com
3 STEVEN M. PERRY (State Bar No. 106154)
steven.perry@mto.com
4 BETHANY W. KRISTOVICH (State Bar No. 241891)
bethany.kristovich@mto.com
5 MUNGER, TOLLES & OLSON LLP
6 355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560
7 Telephone: (213) 683-9100
Facsimile: (213) 687-3702

8 Attorneys for Defendant Intel Corporation
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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**
14

15 IN RE: HIGH-TECH EMPLOYEE
16 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

17 THIS DOCUMENT RELATES TO:

18 ALL ACTIONS
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**DECLARATION OF GREGORY M.
SERGI ON BEHALF OF INTEL IN
SUPPORT OF DEFENDANTS'
RENEWED MOTION TO SEAL
MATERIALS IN CONNECTION WITH
SUMMARY JUDGMENT AND
DAUBERT MOTIONS**

1 I, Gregory M. Sergi, hereby declare and say:

2 1. I am an attorney with Munger, Tolles & Olson LLP, counsel of record for Intel
3 Corporation (“Intel”) in this case, and am admitted to practice before this Court. I make this
4 declaration in support of Defendants’ Renewed Motion to Seal Materials in Connection with
5 Summary Judgment and Daubert Motions being filed concurrently with this Declaration. On
6 behalf of Intel, I make this declaration pursuant to Local Rules 79-5(d) and 7-11(a) to demonstrate
7 compelling reasons for the portions of the documents described below to be filed under seal. If
8 called and sworn as a witness, I could and would competently testify to the matters stated below.

9 2. I have reviewed the documents listed below, and made specific, narrowly tailored
10 redactions where necessary to protect highly confidential and highly sensitive Intel information
11 regarding its compensation, hiring, and recruiting practices.

12 *The Reasons for Sealing the Redacted Information*

13 3. The grounds for Intel’s redactions identified below are set forth in the Declaration
14 of Tina M. Evangelista in Support of Plaintiffs’ Administrative Motion to File Under Seal
15 Plaintiffs Notice of Motion and Motion for Class Certification, and Memorandum of Law in
16 Support, Docket Item 203 (Oct. 8, 2012) (“Evangelista Decl.”) and the Declaration of Tina M.
17 Evangelista in Support of Renewed Administrative Motion to Seal, Docket Item 287 (Jan. 22,
18 2013) (“Evangelista II Decl.”), as well as other declarations specifically referenced below. The
19 types of confidential Intel information reflected in the documents at issue here are the same (or
20 substantially similar) to the types of confidential Intel information described in the Evangelista
21 Declarations. As explained in the Evangelista Declarations, the information at issue here reflects
22 confidential business information that gives Intel a competitive advantage in recruiting, retaining,
23 and compensating employees. Evangelista Decl. ¶ 4. Intel derives independent economic value
24 from the strategic information and raw data contained in these documents not being generally
25 known to the public or to other persons who can obtain economic value from its disclosure or use.
26 *Id.* ¶ 5. It is Intel’s practice to treat these documents and data as confidential, and not to disclose
27 them outside the company. *Id.* ¶ 6. The information reflected in the documents at issue here
28 quotes from, describes, or reflects analysis of Intel’s documents and data that have been

1 designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (“AEO”) pursuant to the
2 Protective Order in this Action.

3 *The Intel Confidential Information that Should be Sealed*

4 4. Specifically, Intel seeks to seal the following highly confidential, commercially
5 sensitive information:

6
7 *Expert Reports and Expert Declarations*

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9 5. **Initial Class Certification Report of Edward E. Leamer, Ph.D. (October 1,**
10 **2012):** The grounds for redactions relating to Intel confidential information are stated in the
11 Evangelista Declaration.

12 6. **Reply Expert Report of Edward E. Leamer, Ph.D (Dec. 10, 2012):** The grounds
13 for redactions relating to Intel confidential information are stated in the Declaration of Susan J.
14 Welch, Docket Item 255 (Dec. 17, 2012).

15 7. **Supplemental Expert Report of Edward E. Leamer, Ph.D (May 10, 2013):** The
16 grounds for redactions relating to Intel confidential information are stated in the Declaration of
17 Krystal N. Bowen in support of Defendants’ Joint Response to Plaintiffs’ Administrative Motion
18 to File Under Seal Plaintiffs’ Supplemental Motion in Support of Class Certification and Related
19 Documents, Docket Item 430 (May 17, 2013) (“Bowen Decl.”). This Court approved these
20 redactions in its Order dated March 14, 2013, Docket Item 730.

21 8. **Rebuttal Supplemental Expert Report of Edward E. Leamer, Ph.D. (July 12,**
22 **2013):** The grounds for redactions relating to Intel confidential information are stated in the
23 Declaration of Frank Busch in support of Defendants’ Joint Response to Plaintiffs’ Administrative
24 Motion to File Under Seal, Docket Item 466 (July 19, 2013). This Court approved these
25 redactions in its Order dated March 14, 2013, Docket Item 730.

26 9. **Expert Report of Edward E. Leamer, Ph.D. (Oct. 28, 2013):**

- 27 • Figure 2 contains information describing confidential Intel employment and
28 compensation data.

- Figure 4 and the related text in Paragraphs 36, 42, and 43 contain information describing confidential Intel compensation data, in particular it reflects the average total compensation for Intel employees in and outside of California.

10. **Reply Expert Report of Edward E. Leamer, Ph.D. (December 11, 2013):**

- Table 1 contains information describing confidential Intel employment and compensation data.
- Paragraph 31 contains information describing confidential Intel employment and compensation data, in particular it reflects actual compensations ranges for a specific Intel job title (COMPONENT_DESIGN_ENGR_7).
- Table 4 contains information reflecting Intel's confidential compensation practices, in particular the information reflects actual correlations between Intel's grant of equity compensation and job grade.
- Figure 14 contains information describing confidential Intel compensation data, in particular it reflects Intel's average total compensation from 2001 to 2011.
- Appendix A, Paragraph 2 contains information describing confidential Intel employment and compensation data, in particular it reflects actual compensations ranges for a specific Intel job title (CAD_ENGINEER_7).

11. **Expert Report of Kevin F. Hallock (May 10, 2013):** The grounds for redactions relating to Intel confidential information are stated in the Bowen Declaration, as modified to reflect the redactions approved by the Court in its Order dated March 14, 2013, Docket Item 730.

12. **Expert Report of Kevin F. Hallock (Oct. 27, 2013):** The grounds for redactions relating to Intel confidential information are stated in the Bowen Declaration. The redactions relating to Intel confidential information in Paragraphs 61, 64, 67-68, 71, 128-29, 132-35, 141-42, 144, 175 and Figure 11 are identical substantively similar to the redactions requested by Intel to the Expert Report of Kevin F. Hallock (May 10, 2013), as described immediately above, and as

1 modified to reflect the redactions approved by the Court in its Order dated March 14, 2013,
2 Docket Item 730.

3 13. **Expert Report of Elizabeth Becker, Ph.D. (Nov. 25, 2013):**

- 4 • Paragraphs 50-54, 56-57 and accompanying footnote 48 contain
5 confidential information describing Intel compensation practices, in
6 particular these paragraphs describe extensively Intel's pay ranges for
7 various job grades and reflects actual compensation ranges for specific Intel
8 job titles and grades.
- 9 • Paragraphs 58-59 contain confidential information describing Intel
10 compensation practices, in particular the actual compensation paid to
11 Plaintiff Mark Fichtner in relation to his pay grades at Intel.
- 12 • Paragraph 80 contains confidential information reflecting Intel
13 compensation data, including specific discussion of Intel's average base
14 salaries from 2001-2011.
- 15 • Paragraph 111 contains confidential information describing Intel
16 compensation practices, in particular the actual equity grants made to
17 Plaintiff Mark Fichtner.
- 18 • Paragraph 113 contains confidential information describing Intel
19 compensation practices, in particular Intel's practices regarding the total
20 compensation provided to employees from 2001 to 2011.
- 21 • Paragraph 116 contains confidential information describing Intel
22 compensation practices, in particular the total compensation paid to Plaintiff
23 Mark Fichtner.
- 24 • Paragraphs 117-18 confidential information describing Intel's confidential
25 employment and compensation practices.
- 26 • Paragraph 120 contains confidential information describing confidential
27 Intel compensation practices, in particular Intel's practices for awarding
28 equity grants to employees.

- Paragraph 125 contains confidential information describing Intel's confidential employment and compensation practices.
- Footnote 96 on page 35 contains confidential information describing Intel's confidential employment and compensation practices.
- Paragraph 139 contains confidential information describing Intel's employment data.
- Paragraphs 142, 144, 147-148 and related footnote 103 contain confidential information that includes Intel's compensation data and practices.
- Paragraphs 149, 155-56, and related footnotes 111, 112, and 117 contain confidential information that includes Intel's compensation data and practices.
- Footnote 117 on page 41 contains confidential information describing how Intel sets compensation.
- Appendix A3 contains confidential information describing Intel's employment data.
- Appendix A4 contains confidential information describing Intel's actual compensation data, in particular this exhibit provides a breakdown of Intel's particular base salary for particular pay grades.
- Appendix B3 contains confidential information describing Intel's actual compensation data related to equity grants to employees.
- Appendix B4 contains confidential information describing Intel's actual compensation data related to equity grants to employees.
- Appendix B5 contains confidential information describing Intel's actual compensation data to employees in various pay grades.
- Appendix B7 contains confidential information describing Intel's actual employment practices and compensation data.
- Appendix B8 contains confidential information describing Intel's actual employment practices and compensation data.

- Appendix C1 contains confidential information describing Intel's actual compensation data related to equity grants to employees.
- Appendix C2 contains confidential information describing Intel's actual compensation data related to equity grants to employees.
- Appendix C5 contains confidential information describing Intel's actual employment practices and compensation data.
- Appendix D2 contains confidential information describing Intel's employment data.
- Appendix E9, given the particular geographic area covered, contains information reflecting Intel's confidential compensation data.
- Appendix E10, given the particular geographic area covered, contains information reflecting Intel's confidential compensation data.
- Exhibit A3 contains confidential information describing Intel's employment data.
- Exhibit A4 contains confidential information describing Intel's actual compensation data, in particular this exhibit provides a breakdown of Intel's particular base salary for particular pay grades.
- Exhibit B3 contains confidential information describing Intel's actual compensation data related to equity grants to employees.
- Exhibit B4 contains confidential information describing Intel's actual compensation data related to equity grants to employees.
- Exhibit B5 contains confidential information describing Intel's actual compensation data to employees in various pay grades.
- Exhibit B7 contains confidential information describing Intel's actual employment practices and compensation data.
- Exhibit B8 contains confidential information describing Intel's actual employment practices and compensation data.

- Exhibit C1 contains confidential information describing Intel's actual compensation data related to equity grants to employees.
- Exhibit C2 contains confidential information describing Intel's actual compensation data related to equity grants to employees.
- Exhibit C5 contains confidential information describing Intel's actual employment practices and compensation data.
- Exhibit D2 contains confidential information describing Intel's employment data.
- Exhibit E9, given the particular geographic area covered, contains information reflecting Intel's confidential compensation data.
- Exhibit E10, given the particular geographic area covered, contains information reflecting Intel's confidential compensation data.
- Attachment 3 contains confidential information describing Intel's actual compensation data.

14. **Expert Report of David Lewin, Ph.D. (Nov. 25, 2013):**

- Exhibit 13B contains confidential information describing Intel's actual compensation data.
- Exhibit 13C contains confidential information describing Intel's actual compensation data.
- Exhibit 14B contains confidential information describing Intel's actual compensation data.
- Exhibit 15B contains confidential information describing Intel's actual compensation data.
- Exhibit 15C contains confidential information describing Intel's actual compensation data.
- Exhibit 16B contains confidential information describing Intel's actual compensation data.

- Exhibit 16C contains confidential information describing Intel's actual compensation data.

15. **Supplement to Expert Report of David Lewin, Ph.D. (Dec. 6, 2013):**

- Exhibit 14B.1 contains confidential information describing Intel's actual compensation data.

16. **Expert Report of Kevin M. Murphy (Nov. 12, 2012):** The grounds for redactions relating to Intel confidential information are stated in the Declaration of Frank Busch in support of Defendants' Joint Administrative Motion to File Under Seal, Docket Item 220 (Nov. 12, 2012).

17. **Supplemental Expert Report of Professor Kevin M. Murphy (June 21, 2013):** The grounds for redactions relating to Intel confidential information are stated in the Declaration of Frank Busch in support of Defendants' Joint Response to Plaintiffs' Administrative Motion to File Under Seal, Docket Item 449 (June 22, 2013). This Court approved these redactions in its Order dated March 14, 2013, Docket Item 730.

18. **Expert Report of Professor Kevin M. Murphy (Nov. 25, 2013):**

- Appendix C-3 reflects Intel's confidential recruiting data, specifically the companies from which Intel hires employees.
- Appendix D-3 reflects Intel's confidential recruiting data, specifically the companies that have hired employees away from Intel.
- Appendix E and Appendix F are the two prior reports of Professor Kevin M. Murphy that are addressed in the two entries directly above.

19. **Amended Expert Report of Edward A. Snyder, Ph.D. (December 6, 2013):**

- Paragraph 36 contains confidential information reflecting Intel's methods for identifying and recruiting potential job candidates.
- Exhibits 3a and 3b, and the related text in Paragraphs 39 and 43, contain confidential Intel employment data, in particular they discuss Intel's hiring and separation statistics from 2002 to 2011.

1 20. **Expert Report of Lauren J. Stiroh, Ph.D (Nov. 25, 2013):**

- 2 • Paragraphs 50-58 contain information describing confidential Intel
- 3 compensation practices, in particular these paragraphs describe extensively
- 4 Intel's particular methods and practices for setting appropriate
- 5 compensation.
- 6 • Paragraph 82 contains information reflecting confidential Intel
- 7 compensation data.
- 8 • Footnote 206 in Paragraph 110 contains information describing Intel's
- 9 confidential practices for setting appropriate compensation.
- 10 • Footnote 225 in Paragraph 123 contains information reflecting confidential
- 11 Intel compensation data.
- 12 • Paragraphs 136 and 137 contain information describing Intel's confidential
- 13 practices for setting appropriate compensation.
- 14 • Paragraph 180 contains confidential information describing Intel's actual
- 15 compensation data.
- 16 • Exhibits III.25 – III.32 contain information describing confidential Intel
- 17 employment and compensation data.
- 18 • Exhibits III.54 – III.55 contain information describing confidential Intel
- 19 compensation data.
- 20 • Exhibit IV.1 contains confidential information reflecting Intel's methods for
- 21 identifying and recruiting potential job candidates.
- 22 • Exhibit IV.3 – IV.5 contain information describing confidential Intel
- 23 employment data.
- 24 • Exhibit IV.15 contains confidential information describing Intel
- 25 employment and compensation data, in particular this exhibit provides a
- 26 breakdown of Intel's particular compensation practices over time with
- 27 respect to individual job titles.
- 28

- Exhibit IV.16 contains confidential information describing Intel's actual compensation data.
- Exhibit IV.20 contains confidential information describing Intel's actual compensation data.
- Exhibit IV.23 contains confidential information describing Intel employment data.
- Exhibit IV.28 contains confidential information describing Intel's actual compensation data.
- Exhibit IV.30 contains information reflecting Intel's confidential compensation practices, in particular the information relates to Intel's methods for setting appropriate compensation levels.
- Exhibit IV.37 contains confidential information describing Intel's actual compensation data.
- Exhibit V.5 contains confidential Intel information reflecting the actual compensation of named plaintiff Mark Fichtner.
- Appendix Exhibit III.1 contains confidential information describing Intel's actual compensation data.

Fact Witnesses Depositions

21. **Daniel McKell, Deposition Excerpts (Mar. 20, 2013) [Cisneros Ex. HH, Docket Item 605]:** The grounds for redactions of Intel confidential information in this document are stated in the Bowen Declaration ¶ 4-10.

Documents

22. **Harvey Declaration:** Ex. 140 (76512DOC000926): The document contains confidential Intel information regarding Intel's recruiting and hiring practices, including detailed instructions on Intel's policies and practices for making job offers.

23. **Harvey Declaration:** Ex. 142 (76545DOC000021): The grounds for redactions of Intel confidential information in this document are stated in the Evangelista Declaration, ¶¶ 3-9.

1 This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013,
2 Docket Item 273.

3 24. **Harvey Declaration:** Ex. 143 (76550DOC000014): The grounds for redactions
4 of Intel confidential information in this document are stated in the Evangelista Declaration, ¶¶ 3-9.
5 This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013,
6 Docket Item 273.

7 25. **Harvey Declaration:** Ex. 145 (76566DOC000005): The grounds for redactions
8 of Intel confidential information in this document are stated in the Evangelista Declaration, ¶¶ 3-9.
9 This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013,
10 Docket Item 273.

11 26. **Harvey Declaration:** Ex. 146 (76566DOC000085): The grounds for redactions
12 of Intel confidential information in this document are stated in the Evangelista Declaration, ¶¶ 3-9.
13 This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013,
14 Docket Item 273.

15 27. **Harvey Declaration:** Ex. 148 (76577DOC000219): The document, which is a
16 white paper and supporting documents, contains confidential Intel information regarding Intel's
17 recruiting and hiring practices, including specific data on Intel's hiring from particular companies.
18 The grounds for redaction of the confidential Intel information are stated in the Declaration of
19 Todd Christensen in Support of Defendants' Joint Administrative Motion to File Under Seal,
20 Docket Item 628, ¶¶ 4-9 (Feb. 21, 2014), and the Declaration of Lawrence S. Achorn in Support of
21 Defendants' Joint Administrative Motion to File Under Seal, Docket Item 626, ¶¶ 4-10 (Feb. 21,
22 2014).

23 28. **Harvey Declaration:** Ex. 149 (76579DOC000714): The document contains
24 confidential Intel information regarding Intel's recruiting and hiring practices, including detailed
25 instructions on Intel's policies and practices for making job offers.

26 29. **Harvey Declaration:** Ex. 150 (76579DOC002323): The grounds for redactions
27 of Intel confidential information in this document are stated in the Evangelista Declaration, ¶¶ 3-9.
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1 This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013,
2 Docket Item 273.

3 30. **Harvey Declaration:** Ex. 152 (76582DOC000902): The document contains
4 confidential information regarding Intel's compensation practices, including detailed discussion of
5 Intel's methods for setting compensation, with specific examples applying Intel's confidential pay
6 methods to particular jobs.

7 31. **Harvey Declaration:** Ex. 153 (76592DOC015613): The grounds for redactions
8 of Intel confidential information in this document are stated in the Evangelista II Declaration, ¶¶
9 4-9. This Court approved these redactions in its Order dated September 30, 2013, Docket Item
10 509.

11 32. **Cisneros Declaration:** Ex. 391 (76583DOC003750): The grounds for redactions
12 of Intel confidential information in this document are stated in the Declaration of Bradley S.
13 Phillips in Support of Notice of Filing Revised Redacted Intel Corp. Documents Filed in Support
14 of Defendants' Joint Response to Plaintiffs' Administrative Motion to File Under Seal Plaintiffs'
15 Motion in Support of Class Certification and Related Documents, Docket Item 538 (January 22,
16 2014) (the "Phillips Declaration") and the referenced Bowen Declaration ¶¶ 4-10. This Court
17 approved these redactions in its Order dated March 14, 2014, Docket Item 730.

18 33. **Cisneros Declaration:** Ex. 393 (76583DOC002007): The grounds for redactions
19 of Intel confidential information in this document are stated in the Phillips Declaration and the
20 referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order dated
21 March 14, 2014, Docket Item 730.

22 34. **Cisneros Declaration:** Ex. 398 (76579DOC005956): The grounds for redactions
23 of Intel confidential information in this document are stated in the Phillips Declaration and the
24 referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order dated
25 March 14, 2014, Docket Item 730.

26 35. **Cisneros Declaration:** Ex. 399 (76582DOC000004): The grounds for redactions
27 of Intel confidential information in this document are stated in the Phillips Declaration and the
28

1 referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order dated
2 March 14, 2014, Docket Item 730.

3 36. **Cisneros Declaration:** Ex. 400 (765825DOC001211): The grounds for redactions
4 of Intel confidential information in this document are stated in the Phillips Declaration and the
5 referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order dated
6 March 14, 2014, Docket Item 730.

7 37. **Cisneros Declaration:** Ex. 478 (76616DOC12164): The grounds for redactions
8 of Intel confidential information in this document are stated in the Phillips Declaration and the
9 referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order dated
10 March 14, 2014, Docket Item 730.

11 38. **Cisneros Declaration:** Ex. 781 (76596DOC017010): The grounds for redactions
12 of Intel confidential information in this document are stated in the Phillips Declaration and the
13 referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order dated
14 March 14, 2014, Docket Item 730.

15 39. **Cisneros Declaration:** Ex. 2030 (McKell Declaration): The grounds for
16 redactions of Intel confidential information in this document are stated in the Phillips Declaration
17 and the referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order
18 dated March 14, 2014, Docket Item 730.

19 40. **Cisneros Declaration:** Ex. 2031 (76512DOC000638): The grounds for redactions
20 of Intel confidential information in this document are stated in the Oct. 8, 2012 Evangelista
21 Declaration ¶¶ 3-9. This document was sealed in its entirety pursuant to this Court's order dated
22 January 15, 2013, Docket Item 273.

23 41. **Cisneros Declaration:** Ex. 2033 (76657DOC004599): The grounds for redactions
24 of Intel confidential information in this document are stated in the Phillips Declaration and the
25 referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order dated
26 March 14, 2014, Docket Item 730.

27 42. **Cisneros Declaration:** Ex. 2035 (76657DOC019261): The grounds for redactions
28 of Intel confidential information in this document are stated in the Phillips Declaration and the

1 referenced Bowen Declaration ¶¶ 4-10. This Court approved these redactions in its Order dated
2 March 14, 2014, Docket Item 730.

3 43. **Cisneros Declaration:** Ex. 2043 (76657DOC016874): The document contains
4 confidential information describing in detail Intel's compensation practices, including the manner
5 in which it makes compensation decisions and establishes salary ranges.

6 44. **Cisneros Declaration:** Ex. 2356 (PIX00002094): The document, which is a white
7 paper and supporting documents by Pixar Animation Studios, contains confidential Intel
8 information regarding Intel's collaborations with Pixar. The grounds for redactions of the Intel
9 confidential information are stated in the Declaration of Kasia Hanson in Support of Defendants'
10 Joint Administrative Motion to Seal, Docket Item 630, ¶¶ 4-8 (Feb. 21, 2014),

11 *The Particularized Harm Disclosure Would Cause*

12 45. According to the Evangelista Declarations (along with other declarations
13 referenced above), which address the same (or substantially similar) types of information as that
14 which is redacted in the above-referenced documents, Intel would suffer particular harm if the
15 redacted information is disclosed to the public. Disclosure of such information would put Intel at
16 a significant competitive disadvantage in terms of its ability to identify, recruit, and compensate
17 employees. Evangelista Decl. ¶ 8. Disclosure of such information would deprive Intel of its
18 investment in developing strategies for recruiting and compensation. *Id.* And disclosure of such
19 information would give Intel's competitors an unearned advantage by informing them of Intel's
20 compensation strategies, compensation levels, and other related information. *Id.*

21 46. Because the information redacted in the above-referenced documents cannot be
22 disclosed without causing particularized harm to Intel, it should be protected from public
23 disclosure.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 Executed this 10th day of April, 2014 at Los Angeles, California.

4 DATED: April 10, 2014

5 _____
6 /s/ *Gregory M. Sergi*

7 Gregory M. Sergi
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